

Innovation in Papua New Guinea's Village Courts: Exceeding Jurisdiction or Meeting Local Needs? Legal Innovation: Part 1



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In 2013, I witnessed a sitting of Hanuabada Village Court in Port Moresby as a guest of the Village Courts Secretariat of Papua New Guinea. Hanuabada was a showcase for an initiative of the secretariat in collaboration with the Australia-funded Law and Justice Partnership to train and appoint more women as Village Court magistrates. This particular court sitting also afforded an opportunity to observe a large urban Village Court in operation, as its style of conducting proceedings stood in stark distinction to the rural Village Courts in which I have previously conducted research (Demian 2003). Hanuabada Village Court hewed closely to the formalities of the District and National Courts, the magistrates' handbook was consulted frequently, and the court appeared in every way to operate as the state apparatus it is meant to be. In contrast, I once recorded a rural Village Court magistrate from Milne Bay Province telling his court in 1999, 'There is no government here: we are the government'.

This *In Brief* outlines an ongoing research project funded by the UK Economic and Social Research Council, titled 'Legal Innovation in Papua New Guinea', aimed at documenting irregularities in the practices of Village Courts and less formal disputing forums. The working hypothesis of this project is that the variability in practice and excesses of jurisdiction reported for Village Courts does not necessarily indicate a failure or breakdown of the system, as periodically has been diagnosed for the courts almost since their inception (Goddard 2009, 77–95). Rather, we appear to be seeing the vernacularisation of an introduced court system over its 39-year history. Vernacularisation, to employ Levitt and Merry's (2009) use of the term, refers to processes whereby 'global' (i.e. elite) institutional values become adopted, translated and transformed at the local level. If this is the process at work in Papua New Guinea's Village Courts, there are at least two possible policy implications for the future of the courts. One would be to increase the

training, regulatory and supervisory capacities of the Village Courts Secretariat, in order to maintain more effectively the jurisdictional limits placed on the courts. The other would be to consider a review of the Village Courts Act 1989 in order to expand the courts' jurisdiction to reflect the ways they are already being used in some parts of the country.

This second option is suggested in recognition of the possibility that the constraints placed on the Village Courts in 1975 may no longer suit the purposes for which people desire to use them now. At the court sitting in Hanuabada, cases heard by the magistrates included conflicts between in-laws, a sorcery accusation, and adultery. Upon patient questioning from the magistrates, every one of these cases turned out actually to be about land: who could live on it, who could build houses there, who could transfer ownership to whom. But land disputes cannot be heard by Village Courts under the present terms of their jurisdiction. As such, the Hanuabada court, like other Village Courts I have observed, was obliged to address a series of what were actually land disputes through the medium of secondary issues. For the Village Courts to succeed both as a means of satisfying local legal sensibilities and as a state mechanism, they may need to become more adaptable to the kinds of cases that people wish to bring.

The variability in practices followed by Village Courts is, perhaps, an inevitable feature of the system itself, and how it has become 'repurposed' by the different communities in which the courts operate. Village Courts were initiated on the eve of Papua New Guinea's independence in 1975. The aim was to provide access to rural people (currently around 85 per cent of the population) to the legal system, in their own languages, without the intervention of lawyers, and in accordance, where appropriate, with local 'custom'. The only legal authorities in the Village Courts are the magistrates and clerks, who are local men and women given some training and a handbook. While

the courts are nominally overseen by the Village Courts Secretariat based in Port Moresby, the reality is that, like many state agencies in PNG, the Secretariat is largely disregarded by many users of the system, particularly those located in remote rural areas. What the courts are actually doing is poorly understood, and therefore subject to a great deal of speculation on the part of the Port Moresby legal establishment as well as external observers.

The current project involves an international research team, with each of its five members focusing on a Village Court and other disputing forums in a different part of the country. The project is informed by my earlier research with professionals in Port Moresby's legal establishment who consistently highlighted specific irregularities in Village Court practices as indicators that the Village Courts are not working. We seek to document instances of these irregularities, such as:

- excesses of jurisdiction, particularly courts that hear land disputes or hold murder trials
- the ordering of very large compensation payments, i.e. over the PGK5000 limit set by the Criminal Law (Compensation) Act 1991
- the involvement of non-Village Court officials in proceedings, such as so-called 'bush lawyers' — men with self-taught legal knowledge who hire themselves out as advocates to disputants
- disputation forums that call themselves Village Courts but are not gazetted with the Secretariat.

In addition to these issues, we have begun to document public forums that do not go so far as calling themselves courts, but appear to be based on the 'style' of Village Courts. While we are still collecting data on these forums, they may be a feature of urban or peri-urban communities in which a dispute is regarded as too fraught with local politics to bring before a Village Court. Some disputants also see the constraints placed on the Village Courts as onerous and arbitrary in nature. Many people would rather direct their resources toward a compensation payment to the aggrieved party, whom they are likely to know personally, than toward a court-levied fine, whose ultimate destination and beneficiaries are unknown.

When people do resort to the Village Courts, they are not necessarily seeking a 'resolution' to conflicts with their neighbours. I have been informed by some disputants that their explicit purpose in bringing a court case was to shame the other party into capitulating or otherwise admitting to inappropriate behaviour. Certainly this appears to be a popular mechanism for women in some parts of Papua New Guinea, who use the Village Courts as a means to remind straying or neglectful husbands of their obligations, not only in the eyes of the law, but in terms of increasingly popular notions of Christian duty and moral continence. Given that an influential criticism of some Village Courts has been the question of whether women can successfully use them to seek redress for their grievances (Garap 2000), one of the topics emerging from this project is the strategic use of the courts by women to achieve specific effects on their intimate relationships. This issue will receive particular attention in the second *In Brief* in this series.

Author Notes

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